

2010-2011

CHAIR

Donald G. Featherstun
560 Mission St, Ste 3100
San Francisco, CA 94105
(415) 544-1088

CHAIR-ELECT

Carol N. Park-Conroy
7404 Rippon Rd
Alexandria, VA 22307
(703) 681-8507

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Mark D. Colley
555 12th St, NW, Ste 730
Washington, DC 20004
(202) 942-5720

SECRETARY

Sharon L. Larkin
631 D St, NW, Apt 441
Washington, DC 20004
(202) 512-2680

BUDGET AND FINANCE OFFICER

David G. Ehrhart
PO Box 748, MZ 1237
Fort Worth, TX 76101
(817) 777-1706

SECTION DELEGATES

Allan J. Joseph
311 California St, 10th Flr
San Francisco, CA 94104
(415) 365-5333

John S. Pachter
8000 Towers Crescent Dr, Ste 900
Vienna, VA 22182
(703) 847-6260

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1050 Connecticut Ave, NW, Ste 9081
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(202) 955-8536

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Bowling Green, KY

SECTION DIRECTOR

Marilyn Netoras
321 N Clark St, M/S 19.1
Chicago, IL 60654
(312) 988-5596

Writer's Address and Telephone

Donald G. Featherstun
560 Mission Street, Suite 3100
San Francisco, CA 94105
415-544-1088
dfeatherstun@seyfarth.com

Dwight H. Merriam
280 Trumbull Street
Hartford, CT 06103
860-275-8228
dmerriam@rc.com

September 10, 2010

Jim Votruba, Board Chair
Muriel A. Howard, President
American Association of State Colleges and Universities
1307 New York Avenue, NW, Fifth Floor
Washington, DC 20005-4701

John Riley, Board Chair
Doreen Murner, Chief Executive Officer
National Association of Educational Procurement
5523 Research Park Drive, Suite 340
Baltimore, MD 21228

**Re: AASCU/NAEP Public College and University Procurement
A Survey of the State Regulatory Environment, Institutional
Procurement Practices and Efforts Toward Cost Containment**

Dear Mr. Votruba, Ms. Howard, Mr. Riley, and Ms. Murner:

On behalf of the Sections of Public Contract Law and State and Local Government Law (the "Sections") of the American Bar Association (the "Association"), we are submitting comments on the above-referenced matter.

I. Introduction

Our Sections consist of attorneys and associated professionals in private practice, industry, and government service. Our Sections' governing Councils and substantive committees have members representing these three segments, to ensure that all points of view are considered. In this manner, both Sections have sponsored the Model Procurement Code Project for over thirty years, and seek to improve the process of public contracting for needed supplies, services, and public works.

The views expressed herein are based on the following two documents: (1) The ABA 2000 Model Procurement Code for State and Local Governments (Model Procurement Code) and implementing regulations, which offer recommended state and local government procurement policies and practices. The Code was approved by the policymaking body of the American Bar Association, its House of Delegates, on July 11, 2000, and represents official ABA policy in this area of the law. (2) The policies contained in a set of Principles of Competition in Public Procurements, which are set out in full in Attachment 1 hereto. In 1998, the ABA's House of Delegates approved a resolution urging that any public acquisition at the federal, state, local, and territorial level adhere to these Principle of Competition in obtaining supplies, services, and construction

II. Background on the ABA 2000 Model Procurement Code

The ABA Model Procurement Code project began in the mid-1970s and focused on bringing transparency, common practices and procedures, and competitiveness to state and local procurement transactions. The original project was the recipient of major grant funding from the Law Enforcement Assistance Administration (LEAA), which provided the sponsoring ABA Sections with a multi-year project office in Washington, DC. After years of extensive work by the Sections and nineteen other national organizations interested in state and local procurement, the 1979 edition of the Model Procurement Code was adopted by the House of Delegates of the ABA. Since 1979, the Model Procurement Code has been adopted in full by sixteen states; in part, by several more; and by hundreds of local jurisdictions. The 1979 edition of the Model Procurement Code helped hundreds of state and local jurisdictions create transparent, competitive, and reliable processes by which they have expended billions of dollars through contracts with private sector businesses.

The Model Procurement Code has had a profound and favorable impact on the conduct of public procurement throughout the United States. For example, in implementing the provisions of the Clean Water Act, which included \$70 billion in federal grants for wastewater treatment plants across the United States, the Environmental Protection Agency (EPA) regulations provided that grantees who could demonstrate that they had adopted fair procurement processes and procedures (a grant requirement) would receive different, less intrusive, and more expeditious review of their grant applications. LEAA and EPA jointly funded the adaptation of the 1979 Model Procurement Code into a Model Procurement Ordinance. EPA regulations provided that grantees could put their applications into the streamlined review track by adopting the ABA Model Procurement Ordinance, and hundreds of local jurisdictions did so.

The 1979 Model Procurement Code offered states and local jurisdictions, for the first time and in one place, a basic formulation of the fundamental principles upon which durable procurement systems rest.

1. Competition
2. Ethics
3. Predictability (stability, advanced publication, accountability)
4. Clear Statements of Procurement Needs
5. Equal Treatment of Bidders/Offerors
6. Methods of Source Selection
7. Clear Statement of Bid/Proposal Evaluation Factors
8. Reduction in Transaction Costs for Public and Private Sector Entities
9. Procurement of Construction Related Services
10. Remedies
11. Facilitation of Intergovernmental Transactions (Cooperative Procurements)

Between 1997 and 2000, the Sections conducted a revision project to improve and update the 1979 Model Procurement Code. The purpose of the project was to update the Model Procurement Code to fit the requirements and needs of state and local governments and their contractors in the year 2000 and beyond. The goals of the revision project were simple, yet profound:

1. Reduce transaction costs for all governmental entities at the state and local levels;
2. Reduce transaction costs to private sector suppliers of goods and services;
3. Substantially increase available levels and ranges of competition through modern methods of electronic communications; and
4. Encourage the competitive use of new technologies, new methods of performing, and new forms of project delivery in public procurement, particularly in the construction area.

Broad participation in the revision project was essential to its success. To achieve this goal, the project was conducted on the World Wide Web through the Massachusetts Institute of Technology (MIT). The project solicited and encouraged full participation by members of the sponsoring Sections, interested associations, individual procurement officials, and agencies throughout the country.

The 2000 revision to the Model Procurement Code was accomplished in cooperation with the National Association of State Procurement Officials, comprising the heads of state procurement in each of the fifty states. In addition, extensive comments and suggestions were received by leading procurement organizations, including the National Institute of Governmental Purchasing, the Design Build Institute of America, the Construction Industry Roundtable (CIRT), the American Consulting Engineers Council, the Engineers Joint Contract Documents Committee, and the Council on Federal Procurement of Architectural & Engineering Services.

The project was launched with seed funding provided by the Sections. Major grant funding for the project was provided by Lockheed Martin; MIT's Civil and Environmental Engineering Department; Public Technology, Inc., and the National Institute of Governmental Purchasing, with financial support from the American Consulting Engineers Council, the Engineers Joint Contract Documents Committee, and the Council on Federal Procurement of Architectural & Engineering Services.

III. AASCU/NAEP Report

Earlier this year, AASCU/NAEP issued a report regarding its Survey of the State Regulatory Environment, Institutional Procurement Practices and Efforts Toward Cost Containment. The Sections generally commend AASCU/NAEP for their efforts to identify areas for improvement in state and institutional procurement practice and policy. We have comments, however, in a number of areas, each of which is addressed below.

A. Basic procurement policy must be provided by law.

AASCU/NAEP recommends that states "[p]rovide greater autonomy to systems and institutions regarding procurement policy." (Study, p. 8) According to the study, greater autonomy involves "[g]reater autonomy from state statutes, regulations and policies" that control procurement. (Study, p. 25) This recommendation directly conflicts with the basic principles underlying the 2000 Model Procurement Code, that the fundamental rules of a public procurement system must be defined by law.¹ If a public body cannot be compelled to comply with the rules that govern its expenditure of public funds, the integrity of the procurement system is totally undermined. Unlike institutional policy, laws can be enforced. Adopting this recommendation would divorce the procurement process from all statutory and regulatory requirements (including those pertaining to oversight, accountability and transparency) and constitute, in our view, a radical departure from long established norms in public procurement such as those reflected in the Model Procurement Code. Should states choose to adopt this recommendation, it would appear that the analysis in doing so should, at a minimum, include an express determination that the State intends to abandon its own public procurement policies and procedures, as they are expressed in the States' procurement code.

¹ Model Procurement Code § 1-101 cmt. (2000) (explaining that the purposes and policies appearing in Section 1-101 "outline the general rationale for the promulgation of this Code"). *See, also* Model Procurement Code, Drafting Concepts, at xiii ("The 2000 Code remains a short statute that provides the fundamentals of sound procurement that should be implemented by regulations consistent with the statutory framework.").

B. State procurement systems require strong central leadership.

As noted above, AASCU/NAEP recommends that states provide greater autonomy to systems and institutions regarding central state procurement policy. AASCU/NAEP also recommends that states consider increasing the minimum dollar threshold for purchases requiring approval of the state's central procurement office. (Study, pp. 6, 8)

The effective operation of a state procurement system requires central leadership to provide direction and cohesion.² Likewise, in order to provide sound, consistent, and coherent procurement policy, the authority to promulgate regulations and establish procurement policy must be centralized.³ Accordingly, the Model Procurement Code recommends that states assign plenary authority over their procurement systems to a single chief procurement official.⁴ This plenary authority expressly includes all authority over the solicitation and award of public contracts.⁵

Despite this centralization of authority, the Model Procurement Code does not contemplate that all procurements will be conducted by a centralized office. Rather, the Model Procurement Code expressly contemplates that the chief procurement official will freely delegate procurement authority to individual agencies after consideration of the following factors:

- (a) the expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;
- (b) the past experience of the potential delegate in exercising similar authority;
- (c) the degree of economy and efficiency to be achieved in meeting the [State's] requirements if authority is delegated;

² *Id.* § 2-301, cmt. ("State and local public procurement systems are the means through which critical and strategic services, supplies and construction are purchased to support essential public functions. To operate effectively, it is imperative in those systems that there be central leadership to provide direction and cohesion.").

³ *Id.* §§ 2-101, 2-102, 2-201, 2-204(4), and 2-301.

⁴ *Id.* § 2-201, cmt. ("[S]tatutes assigning those duties should ensure that any official to whom such duties are assigned has plenary authority over the State's procurement system, including or similar to the duties and authorities set forth in this Part for the Chief Procurement Officer."), and § 2-204(3) (listing powers and duties of a chief procurement officer).

⁵ *Id.* § 2-301 ("Except as otherwise provided in this Part, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in, or exercised by, any [State] governmental body under the several statutes relating thereto are hereby transferred to the Policy Office or the Chief Procurement Officer, as provided in this Code.").

(d) the available resources of the Office of the Chief Procurement Officer to exercise the authority if it is not delegated, and the consistency of delegation under similar circumstances.⁶

As these factors reflect, the degree to which procurement authority should be delegated to a particular agency is highly dependent on that agency's expertise, appropriate staffing, track record of compliance, and the degree to which economy and efficiency are served by centralization. Consistent with this position, the Sections support the continued review and adjustment of the thresholds at which procurements must be conducted by a central purchasing office. Nevertheless, these thresholds are not appropriate for statute or regulation because they should be tied to circumstances that are subject to rapid change and unique to individual agencies.

C. Procurement laws should govern all public funds, regardless of the source.

Reduced state funding (*i.e.*, appropriated money) is a key justification for recommending greater autonomy for colleges and universities.⁷ In this context, the study repeatedly distinguishes between "state-appropriated taxpayer monies and students' tuition dollars,"⁸ clearly suggesting that different rules should apply based on the source of funding.

With regard to sound public procurement policy, no distinction should be made between taxpayer and tuition dollars. To the contrary, procurement laws should apply "to every expenditure of public funds irrespective of their source."⁹

Not only do these institutions use public funds; they are – at their core – public institutions. In large measure, they are governed by elected officials or by officials appointed by elected officials; they operate on land and within buildings owned and paid for by the public; they are subsidized by common state programs, such as state supported self-insurance pools for health, property, and liability; and some have the power to seize private property (eminent domain). Public institutions of higher education were created

⁶ *Id.* § 2-301, cmt.

⁷ Study, p.6 ("Recession-induced state cutbacks in funding for public colleges and universities, combined with a surge in student enrollments, have made it imperative for these institutions to further scrutinize current spending and implement new reforms and practices that fully leverage every taxpayer and tuition dollar expended, while continuing to ensure accountability.").

⁸ Study, p.25. *Also, see*, Study, p.6 ("taxpayer and tuition dollar"), p.10 ("taxpayer and tuition dollar"), p.12 ("state tax dollars for operating support (appropriations) and students' tuition dollars").

⁹ Model Procurement Code § 1-104(2) ("This Code shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies . . ."). *See, also*, § 5-101(5) cmt. (reflecting the Model Procurement Code's applicability to all types of public funds, including publicly imposed user charges, fares, or tolls).

by the public to serve the public. They charge fees (tuition) to use public assets, to pay for operating public assets, and to repay loans authorized by the public. In addition, even if the amounts are diminishing, they spend money collected by both state and federal government through taxation. These are public entities and all their monies are public funds, which should be expended using the same rules applicable to all public institutions.

D. Small purchase thresholds should be periodically reviewed.

AASCU/NAEP recommends that states "[r]eview, and if warranted, . . . adjust minimum thresholds involving formal competitive (sealed) bids." (Study, p. 25) This recommendation is consistent with the approach recommended in the Model Procurement Code.

States should use full and open competition to the maximum extent practicable. Nevertheless, below a certain dollar threshold, public purchases do not justify the administrative time and expense necessary for the conduct of full and open competitive processes. For such purchases, streamlined procedures can make small purchases administratively simpler to complete while ensuring an appropriate measure of competition.¹⁰

The appropriate dollar threshold for the use of these procedures is a matter of policy.¹¹ Because small purchase procedures are an exception to the fundamental policy of full and open competition, such procedures should be allowed only when the value of the efficiencies gained exceed the value lost from reduced competition.¹² The threshold for using such procedures should be established accordingly.

The 2000 Model Procurement Code suggests a small purchase threshold of \$25,000 for supplies and services and a small purchase threshold of \$100,000 for construction.¹³

¹⁰ *Id.* § 3-204, cmt.

¹¹ *Id.* § 3-204, cmt. ("The appropriate dollar limitations for the use of these procedures are left to regulation within each enacting jurisdiction"). *See, also* Model Procurement Code, Mechanics of Drafting, at xii.

¹² *Id.* § 3-201, cmt. (The Model Code "permits less formal competitive procedures where the amount of the contract does not warrant the expense and time otherwise involved."). *Also*, Principles of Competition No. 1.

¹³ 2002 Model Procurement Regulations § R3-204.01 ("In accordance with Section 3-204 (Small Purchases) of the [State] Procurement Code, this Regulation establishes [\$25,000] as the amount for supplies or services and [\$100,000] as the amount for construction below which small purchase procedures may be used for procurements.")

E. Available source selection methods should include competitive sealed proposals.

AASCU/NAEP raises concerns with states "ruling out consideration of nonmonetary factors" (Study, p. 7) and recommends that states "[e]liminate state mandates requiring institutions to accept the lowest responsive bids in the awarding of contracts." (Study, p. 25)

The Model Procurement Code expressly endorses the use of competitive sealed bidding as a source selection method, and the Sections recommend against its elimination. Bidding, however, should not be the only available source selection method.¹⁴ The Model Procurement Code also endorses the competitive sealed proposals source selection method, which involves the consideration of factors other than price. Both of these methods should be available, as appropriate.¹⁵

F. Cooperative purchasing contracts (i.e., "group-purchasing consortia") should be awarded through full and open competition using a source selection process substantially similar to those specified in Article 3 of the Model Procurement Code.

AASCU/NAEP recommends that institutions be allowed to participate in group-purchasing consortia, which the Model Procurement Code calls cooperative purchasing.¹⁶ Both government and industry can recognize substantial benefits from cooperative purchasing. Industry gains from increased economies of scale. Government gains from greater volume discounts and reduced administrative expense.¹⁷ Accordingly, the ABA endorses the generous use of cooperative purchasing,¹⁸ but only if the contracts used are awarded through full and open competition, including use of source selection processes substantially similar to those specified in Article 3 of the Model Procurement Code.¹⁹

¹⁴ Model Procurement Code § 3-201.

¹⁵ *Id.* § 3-203(1) cmt. (1) ("The competitive sealed proposal method (similar to competitive negotiation) is available for use when competitive sealed bidding is either not practicable or not advantageous. The competitive sealed proposal method is mandated for the project delivery methods described in Article 5: design-build, design-build-operate-maintain, and design-build-finance-operate-maintain.").

¹⁶ *Id.* § 10-101(1) ("Cooperative Purchasing means procurement conducted by, or on behalf of, one or more Public Procurement Units, as defined in this Code.").

¹⁷ *Id.*, at xvi ("The intent of these changes is to broaden the opportunity for state and local governments to obtain volume discounts through joint purchasing and to lower the transaction costs of both purchasing agencies and vendors in completing such transactions.").

¹⁸ *Id.*, at xvi (Under the Model Code, "Public Procurement Units are freely authorized and encouraged to enter into cooperative purchasing arrangements with one another.").

¹⁹ *Id.* § 10-201(2) ("All Cooperative Purchasing conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 3 (Source Selection and Contract Formation) of this Code.").

Fair and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically.²⁰ The benefits of competition can be circumvented by allowing public entities to participate in cooperative procurements conducted by entities with less restrictive procurement processes, *i.e.*, venue shopping. Allowing such action can lead to the proverbial race to the bottom.

Likewise, full and open competition can be circumvented by allowing public entities to choose among available cooperative contracts in order to acquire their preferred products or suppliers. Like artificially dividing a procurement in order to use the small purchase procedures, using cooperative purchasing to pick a favored supplier or preferred product is an improper use of an otherwise proper procurement method. It simply avoids full and open competition.²¹

Lastly, full and open competition can be circumvented by allowing public entities to join a cooperative contract after the contract has been awarded, a practice known as "piggybacking." This practice is of particular concern when an added public entity materially increases the volume or value of sales originally competed. To maximize economies of scale, jurisdictions are encouraged to identify as many participants in a particular cooperative purchase at the outset.²²

In order to insure that cooperative contracts are awarded through full and open competition, and to guard against misuse, states must prohibit the use of cooperative purchasing for the purpose of circumventing a state's procurement rules.²³

G. Negotiation is an appropriate practice to use with the competitive sealed proposals process, but not in competitive sealed bidding.

AASCU/NAEP recommends that institutions be allowed "to conduct negotiations with suppliers subsequent to the competitive bidding process." (Study, p. 26) To allow bargaining with one or more bidders after bid opening is fundamentally flawed. In bidding, all bidders offer on the same scope of work, with award "made on a purely objective basis to the lowest responsive and responsible bidder."²⁴ Because the award decision can depend on slight differences in price, and because slight changes in the

²⁰ *Id.* § 3-201, cmt. (3).

²¹ *See, generally*, Principles of Competition ("5. Use reasonable methods to publicize requirements and timely provide solicitation documents (including amendments, clarifications and changes in requirements).").

²² Model Procurement Code § 10-203, cmt. ("Conversely, to maximize economies of scale, jurisdictions are encouraged to identify as many participants in a particular cooperative purchase at the outset.").

²³ *Id.* § 10-207 ("Public Procurement Units may not enter into a Cooperative Purchasing agreement for the purpose of circumventing this Code.").

²⁴ *Id.* § 3-203(1), cmt. (3)(a).

scope of work can change a bidder's price, negotiating even small changes to the scope of work can materially alter the outcome of the competitive process. A separate problem arises from the fact that such negotiations would take place after bid prices have been exposed. Negotiating after prices have been exposed undermines the viability of competitive sealed bidding by reducing the pressure for bidders to offer competitive prices in the first instance, pressure that exists because only one opportunity is provided to offer best price. For at least these two reasons, negotiations are fundamentally inconsistent with competitive sealed bidding and should not be allowed.²⁵ In contrast, negotiations should be allowed in competitive sealed proposals,²⁶ provided the law provides for appropriate safeguards.²⁷

H. Reverse auctions may be best suited for easily identifiable, commodity-type items or simple services, where there are few if any distinguishing characteristics and where price is the determining factor.

AASCU/NAEP recommends that states "[e]nable institutions to participate in reverse auctions" (Study, p. 26) The Sections believe that reverse auctions can be used effectively for easily identifiable, commodity-type items or simple services, where the items being procured have few if any distinguishing characteristics and where price is the determining factor. Nevertheless, because reverse auctions are new and evolving, there are justifiable concerns about their potential impact on the integrity of the procurement process. Use of reverse-auction techniques in procurements involving goods or services other than simple commodities, where requirements or specifications are unique or more complex, and where procurement officers must exercise judgment in the selection process through price/technical tradeoffs or best-value analysis, may require more detailed, specific guidance.²⁸

²⁵ *Id.* § 3-202(1), cmt. ("Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is to be made based strictly on the criteria set forth in the Invitation for Bids."), and § 3-203(1), cmt. (3)(b) ("[U]nder competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances."). *See, also*, 2002 Model Procurement Regulations § R3-101.01.4.

²⁶ Model Procurement Code § 3-203(1), cmt. (3)(b) ("The competitive sealed proposal method, on the other hand, permits discussions after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.").

²⁷ *Id.* § 3-203(6), cmt. (2) ("Safeguards against abuse in the conduct of negotiations must be strictly observed to maintain the essential integrity of the process. Procedures should be specified in regulations in order to achieve these objectives.") (emphasis added).

²⁸ The following publications may provide a useful discussion of additional policy considerations involved in reverse auctions: *Reform of the UNCITRAL Model Law on Procurement: Procurement Regulation for the 21st Century* (Sue Arrowsmith ed., Thomson Reuters/West 2009) (Chapters 11 to 14 address the regulation of electronic reverse auctions in public procurement law), and Daniel B. Volk, *A Principles-Oriented Approach To Regulating Reverse Auctions*, 37 Public Contract Law Journal 127 (2007). Citation to these publications is not a suggestion that they represent or reflect ABA policy.

When reverse-auction techniques will be utilized, the solicitation must provide adequate notice to potential offerors regarding the procedures to be used for the reverse auction, including a detailed discussion of the logistics, timing, and communication requirements for the event.

While the Model Code provides specific guidance on bid mistakes and the available relief,²⁹ it is not clear that mistakes in reverse auctions fit neatly within this scheme. In particular, proof of an "intended" bid could be problematic.

Some states impose in-state vendor preferences that require the application of a pricing differential to some offers. Current technology permits these mandatory pricing differentials to be factored into prices in real-time during a reverse auction through instantaneous application of an algorithm, so that all offerors see the adjusted or evaluated prices in real-time. This could materially distort the competitive pricing process. If such preferences are applied to procurements involving reverse auctions, the manner in which this issue is to be handled should be addressed in the law authorizing reverse auctions in order to avoid lack of uniformity among the agencies and possible confusion among bidders.

Lastly, the potential for unrealistically low prices should be considered. Bidders can find that, in the heat of an open competitive auction, they have gone too far in attempting to secure or retain the buyer's business. The Model Procurement Code does not prohibit underbidding a contract. In fact, many contractors routinely reduce their margins or bid at a loss for sound business reasons. The Sections do not believe that this practice should be limited or discouraged. Nevertheless, in light of the potential for this "winner's curse" and the unintended difficulties that it may engender for both contractors and the government, it may be appropriate for any enabling legislation to address the concept of fair and reasonable prices in the context of reverse auctions.

I. Adequate professional training is essential for a functional procurement system.

AASCU/NAEP recommends that "procurement officers receive adequate training and ongoing guidance regarding current state procurement statutes, regulations and policies." (Study, p. 28). In making this recommendation, the Study offers the following observations:

The survey data revealed that in some cases, respondents from the same state interpreted existing state procurement policy differently. Opportunities to contain costs may be lost as a result of differing understanding of state policy. From an accountability standpoint,

²⁹ Model Procurement Code § 3-202(6), cmt.

institutions should ensure that state policies affecting purchasing decisions and protocols are being appropriately followed. Likewise, procurement officers should receive adequate initial training and continued professional development to ensure that they are aware of state procurement policies, especially in an era when changes are occurring in this policy domain.

The Sections agree with this recommendation and these observations. Procurement is a complex process that experience has shown can only be adequately learned over a period of time. Moreover, training in procurement is vital for those without prior experience in the field. Adequate and ongoing training is essential to the successful operation of a state's procurement system. The Model Procurement Code recommends that each state establish a state-level procurement training system.³⁰

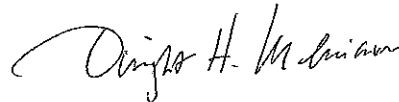
IV. Conclusion

The Sections are available to provide additional information or assistance as you may require.

Sincerely,



Donald G. Featherstun, Chair
Section of Public Contract Law



Dwight H. Merriam, Chair
Section of State and Local Government Law

cc: National Association of State Purchasing Officials
National Institute of Governmental Purchasing
National Conference of State Legislatures
National Association of College and University Attorneys
Section of State and Local Government Law, Council & Officers
Section of Public Contract Law, Council & Officers
Co-Chairs of the Model Procurement Code Committee

³⁰ *Id.* § 2-503.

Principles of Competition in Public Procurements

RESOLVED, that the American Bar Association urges that any public acquisition at the federal, state, local, and territorial level adhere to the following principles of competition in obtaining supplies, services, and construction:

1. Use full and open competition to the maximum extent practicable.
2. Permit acquisitions without competition only when authorized by law.
3. Restrict competition only when necessary to satisfy a reasonable public requirement.
4. Provide clear, adequate, and sufficiently definite information about public needs to allow offerors to enter the public acquisition on an equal basis.
5. Use reasonable methods to publicize requirements and timely provide solicitation documents (including amendments, clarifications and changes in requirements).
6. State in solicitations the bases to be used for evaluating bids and proposals and for making award.
7. Evaluate bids and proposals and make award based solely on the criteria in the solicitation and applicable law.
8. Grant maximum public access to procurement information consistent with the protection of trade secrets, proprietary or confidential source selection information, and personal privacy rights.
9. Insure that all parties involved in the acquisition process must participate fairly, honestly, and in good faith.
10. Recognize that adherence to the principles of competition is essential to maintenance of the integrity of the acquisition system.

Approved in 1998 by the
American Bar Association
House of Delegates